Policy Focus

Health Insurance Exchanges Explained

RECIPES FOR RATIONAL GOVERNMENT FROM THE INDEPENDENT WOMEN'S FORUM

By Hadley Heath, Senior Policy Analyst

January 2013

Volume 3, Number 1

IN THIS ISSUE

What You Need to Know 1

Why You Should Care 2

More Information

What Is an ObamaCare Health Insurance Exchange? 2

What Will an ObamaCare Health Insurance Exchange Do? 3

SHOP Exchanges 3

The Debate for States 4

A Different Solution: Give States Freedom 5

Federal Exchanges – IRS Controversy 5

What You Can Do 6

independent women's forum

WHAT YOU NEED TO KNOW

One important component of the Affordable Care Act (ObamaCare) is the creation of statewide "exchanges" or organizations that will oversee the sale and purchase of health insurance, mainly for people outside of the employer-sponsored insurance market.

The law invites, but does not require, states to create exchanges for their residents. In December 2012, states had to decide if they would establish and manage their own exchanges, or if they would refuse. Eighteen states and the District of Columbia elected to run their own exchange. Seven states agreed to operate their exchanges as federal-state partnerships. The federal government will step in and create exchanges in the remaining 25 states.

Through the exchanges, states (or the federal government) will monitor and rate what types of plans are bought and sold. Tax credits and subsidies will be provided to some people, and penalties for noncompliance will be levied on others.

Many ObamaCare advocates and mainstream media outlets celebrate the exchanges as "health insurance marketplaces" where consumers will find information and a variety of insurance options. But far from creating a real marketplace, these exchanges will simply be a mechanism for the government to exert greater control over the health insurance arena, which will result in less competition, fewer choices, and less innovation.

Ms. Isabelle Terry
5822 Olde Meadow Ct NE
Rockford, MI 49341-7315

WHY YOU SHOULD CARE

The health insurance exchanges will have a profound impact on America's health care system:

- **Limiting Choices:** Rather than making insurance more competitive, the exchanges are likely to make it less so by allowing only certain insurers to offer certain, government-approved health plans on the exchange. The exchanges will add a layer of bureaucracy to our health system, inserting yet another party between patients and doctors.
- **Delivering Tax Credits and Subsidies:** Americans up to 400 percent of the federal poverty line will qualify for tax credits or subsidies when they purchase health insurance in the state exchanges. In the next ten years, our federal government will spend over $1 trillion on these subsidies.
- **Penalizing Employers:** The exchanges will be used to trigger higher tax penalties for employers who do not offer their workers health insurance that is "adequate" and "affordable" (as defined by the government). Employers will be drafted into information sharing with the exchange agencies in order to monitor the real-time employment and insurance status of every person.

The exchanges represent a great expansion of government health insurance regulation, which will have an impact on our choices, our budgets, and our jobs.

MORE INFORMATION

What Is an ObamaCare Health Insurance Exchange?

The Affordable Care Act authorizes the creation of statewide exchanges – called "American Health Benefit Exchanges" in Section 1311(b)(1): "Each state shall, not later than January 1, 2014, establish an American Health Benefit Exchange."

That directive suggests that states have no choice but to create an exchange. However, a later section, 1321(c) states: "If a State is not an electing State... the Secretary shall (directly or through agreement with a not-for-profit entity) establish and operate such Exchange within the State and the Secretary shall take such actions as are necessary to implement such other requirements."

Section 1311(d) details the role of exchanges: "An Exchange shall be a governmental agency or nonprofit entity that is established by a State. An Exchange shall make available qualified health plans to qualified individuals and qualified employers. An Exchange may not make available any health plan that is not a qualified health plan."

In plain English, this means the exchanges will be the gatekeepers, allowing certain health insurance policies to be bought and sold, while excluding others that aren't "qualified" health

plans. What constitutes a "qualified" health plan? The Affordable Care Act describes qualified health plans as those that contain "minimum essential health benefits," as determined by the Department of Health and Human Services.

States are allowed to raise the bar – and require more pieces of mandated coverage – but they cannot lower the bar and permit the sale of health plans that are more basic than the federal guidelines.

What Will an ObamaCare Health Insurance Exchange Do?

Besides enforcing the minimum essential health benefits by keeping out "unqualified" plans, the state exchanges must provide a toll-free telephone hotline and a Web site which will offer "standardized comparative information" on health plans, an electronic calculator for people to determine the cost of their coverage, and assign each plan in the exchange a rating "in accordance with the criteria developed by the Secretary" of HHS. The exchanges also must inform people of eligibility for Medicaid, CHIP, or any State or local public program and help enroll people who are eligible.

The exchanges will also be used to monitor citizens' employment and insurance status to make sure everyone is in compliance with the law. That's why exchanges must grant certifications to certain people who are exempt from the law's individual mandate to buy health insurance. Then, the exchanges will provide the following to the Secretary of the Treasury:

- a list of those exempted from the mandate, along with their tax information;
- a list of people eligible for a tax credit in the exchange because their employers didn't provide adequate or affordable offers of health coverage;
- a list of people who have notified the exchange that they've changed employers; and,
- a list of people who have ceased their health insurance coverage and the date of their cessation.

The Treasury Department will use this information to determine which individuals and employers owe penalties. The exchanges will also be responsible for informing employers of any of their workers who cease coverage in the exchange (and their cessation dates).

Finally, exchanges are responsible for establishing a program called "Navigators" – basically people who will assist businesses and individuals in finding health plans (what the private market might call "health insurance agents"). With all the red tape and paperwork, we will all certainly need help navigating this new system.

SHOP Exchanges

Each state is actually supposed to set up two exchanges: one for individuals and one for small businesses. SHOP stands for the "Small

business Health Options Program." In some states the individual and SHOP exchanges will operate independently; in some states they will be merged.

While no employer with fewer than 50 employers is required to offer health insurance under ObamaCare, many employers have traditionally included this benefit because of the market incentive (to attract and retain valuable workers), and because our tax code allows people to obtain employer-sponsored insurance with pre-tax dollars.

States can allow businesses with up to 100 workers to participate in the SHOP exchange, or they can limit participation to businesses with no more than 50 workers. The SHOP exchange will have the same characteristics as the individual exchange: It will be limited to only "qualified" health plans, and it will compare plans using a standardized rating system. As the HealthCare.gov Web site explains, it will "simplify choices" for small businesses.

The Debate for States

The choice faced by states – whether or not to establish exchanges – was a difficult one. Would creating an exchange mean compliance with ObamaCare? Would it mean a higher bill for states? Even for conservative-led states that oppose ObamaCare, a question of strategy remained: Would refusing to create an exchange mean ceding even more control to the federal government?

Deciding not to establish an exchange meant turning down federal grant money, sometimes as much as $500 million in grants. But the 25 states that refused calculated that in the long run, the costs of running their own exchange would exceed the federal support.

Chris Christie, the Governor of New Jersey, explained, "I will not ask New Jerseyans to commit today to a state-based exchange when the federal government cannot tell us what it will cost, how that cost compares to other options and how much control they will give the states over this option that comes at the cost of our state's taxpayers."

Oklahoma Governor Mary Fallin also cited concerns about state sovereignty, saying, "If we tried to do our own state exchange, myself and other governors across the nation believe it's in name only because in the end it would be the Obama administration that would approve it."

In the end, the governors of the 25 states who refused to establish exchanges decided to step aside and let the federal government take over. Aside from the obvious practical problem this creates for ObamaCare (Is the federal government even capable of running 25 exchanges in 25 states?), the philosophical statement looms large. As the Wall Street Journal editors noted in the days following the decision deadline:

"ObamaCare was designed to make a Washington-dominated and -paid for system inevitable. Within three or four years the same

people who passed ObamaCare will be talking about 'solving' ObamaCare's government-created problems with more government. The [25] Governors are merely saying they won't be accomplices."

A Different Solution: Give States Freedom

The federal government shouldn't be in the business of regulating health insurance at all. Constitutionally speaking, health regulation should be in the purview of the states as a part of their policing power.

Some regulations help shape a robust, competitive market. People want to be sure that their contracts will be enforced, that firms aren't advertizing falsely, and that no one is cheating the system. But over-regulation in health insurance markets has already had disastrous effects on prices and choices for consumers. Instead of attempting to fix this problem by further restricting markets and creating statewide exchanges, states should do the opposite, and open their markets to real competition and innovation.

People should be free to purchase insurance from companies in other states. This would multiply our options fifty times over, and more options would increase competition – lowering prices, encouraging higher quality, and increasing customer satisfaction.

There's simply no need for states to define "qualified" and "unqualified" plans. If a health plan isn't satisfactory to consumers, they won't buy it. If there's a demand for more clear information to help consumers pick health plans, the private sector can also provide such tools (such as eHealthInsurance, a private Web site like *Travelocity* for health insurance).

The exchanges are not the solution to our existing health care problems, and in fact are simply another step in the bad direction of further complicating and constricting our health system. Real reform would mean giving states – and individuals – more freedom to make their own choices.

Federal Exchanges – IRS Controversy

The 25 states who refused to establish their own exchanges will default to federally-run exchanges. One way Congress intended to "encourage" states to build their own exchanges was by conditioning the law's "premium assistance tax credits" (and therefore some taxes on employers) only to people in state-run exchanges. This would mean only half of the country would receive the tax credits, because the 25 federal exchanges could not deliver them.

ObamaCare's advocates have attempted to correct this problem through an IRS rule that essentially changes the law to allow for tax credits and subsidies in the federal exchanges. This regulatory power-grab reverses the letter and intent of the Affordable Care Act, and has resulted in a lawsuit filed by the State of Oklahoma that is now before a federal court.

The IRS is an executive agency that can only collect new taxes or dispense new subsidies with a legislative directive. Without a legal basis for the ObamaCare tax credits and penalties, the IRS may be operating illegally in the federally-run exchanges. The Courts will have to decide.

WHAT YOU CAN DO

You can learn more about insurance exchanges and their impact on the U.S.

- **Get Informed:** To learn more visit:
  - Independent Women's Forum
  - The Cato Institute
  - HealthCareLawsuits.org
- **Talk to Your Friends:** Help your friends and family understand these important issues. Tell them about what's going on and encourage them to join you in getting involved.
- **Become a Leader in the Community:** Get a group together each month to talk about an issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. A few motivated people can change the world
- **Remain Engaged:** Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your representatives know your opinions. After all, they are supposed to work for you!

ABOUT THE INDEPENDENT WOMEN'S FORUM

The Independent Women's Forum (IWF) is dedicated to building support for free markets, limited government, and individual responsibility.

IWF, a non-partisan, 501(c)(3) research and educational institution, seeks to combat the too-common presumption that women want and benefit from big government, and build awareness of the ways that women are better served by greater economic freedom. By aggressively seeking earned media, providing easy-to-read, timely publications and commentary, and reaching out to the public, we seek to cultivate support for these important principles and encourage women to join us in working to return the country to limited, Constitutional government.

We rely on the support of people like you! Please visit us on our website www.iwf.org to get more information and consider making a donation to IWF.

SUPPORT IWF NOW!

OUR PARTNERS

Independent Women's Voice — A VOICE FOR THE MAINSTREAM

NeW — Network of enlightened Women

SGP SMART GIRL POLITICS Action

Contact us if you would like to become a partner!

CONNECT WITH IWF! FOLLOW US ON:

Reality #1: Not A Marketplace

Words can deceive, as proponents of federal health reform know well. Calling the proposed Minnesota health insurance exchange a "marketplace" is nothing but a veiled attempt to use free-market terms to describe a system that is anything but free-market. A real marketplace is an open, competitive place to purchase a broad range of goods and services.

The "Minnesota Insurance Marketplace" in Senate File 1/House File 5 is not competitive, limits citizens' choice of health insurance options, expands government dependency (premium subsidies for middle class/Medicaid expansion), is managed by unelected state workers, is under federal control (law/regulations), and operates through the online transfer of vast quantities of personal data on individuals from state and federal government. *How many stores or websites that you shop at operate like this?*

The left-leaning **Herndon Alliance** reported on research done on the words to use to best sell the Exchange to the American public. The research found "marketplace" was the best option. Here are a few comments from their two-page overview:

> An informed public is supportive of the marketplace concept…The public 'gets' a marketplace; they remain confused by an 'exchange.' … Anti-government/anti-health law participants were very positive about the marketplace … If the public knows about the marketplace, those legislators who aren't seen as working to implement it in their state will be seen as taking away something they want. --*"The Exchange (The Competitive Health Marketplace),"* herndonalliance.org)

Last week, the U.S. Department of Health and Human Services changed their Exchange terminology. They shifted from "Health Insurance Exchanges" to the "Health Insurance Marketplace." (http://www.healthcare.gov/marketplace/index.html)

Coming Thursday: Reality #2

Reality #2: It's Not Travelocity!

The Minnesota Health Insurance Exchange (MNHIX) has been compared to Travelocity. Proponents have called it a "marketplace." However, one look at the diagram below – created by reading the State's detailed contract with Maximus, Inc, which is building the Exchange -- makes it clear that this is not Travelocity. This is a government bureaucracy. It's big. It's intrusive. And it's a state agency under federal control. The contract even calls it the "federal MNHIX."

When you think about government agencies, the words simple, efficient, or transparent rarely come to mind. Before you are even allowed to buy insurance on the Exchange, the Federal Data Services Hub will gather data from you, from state agencies and from federal agencies to:

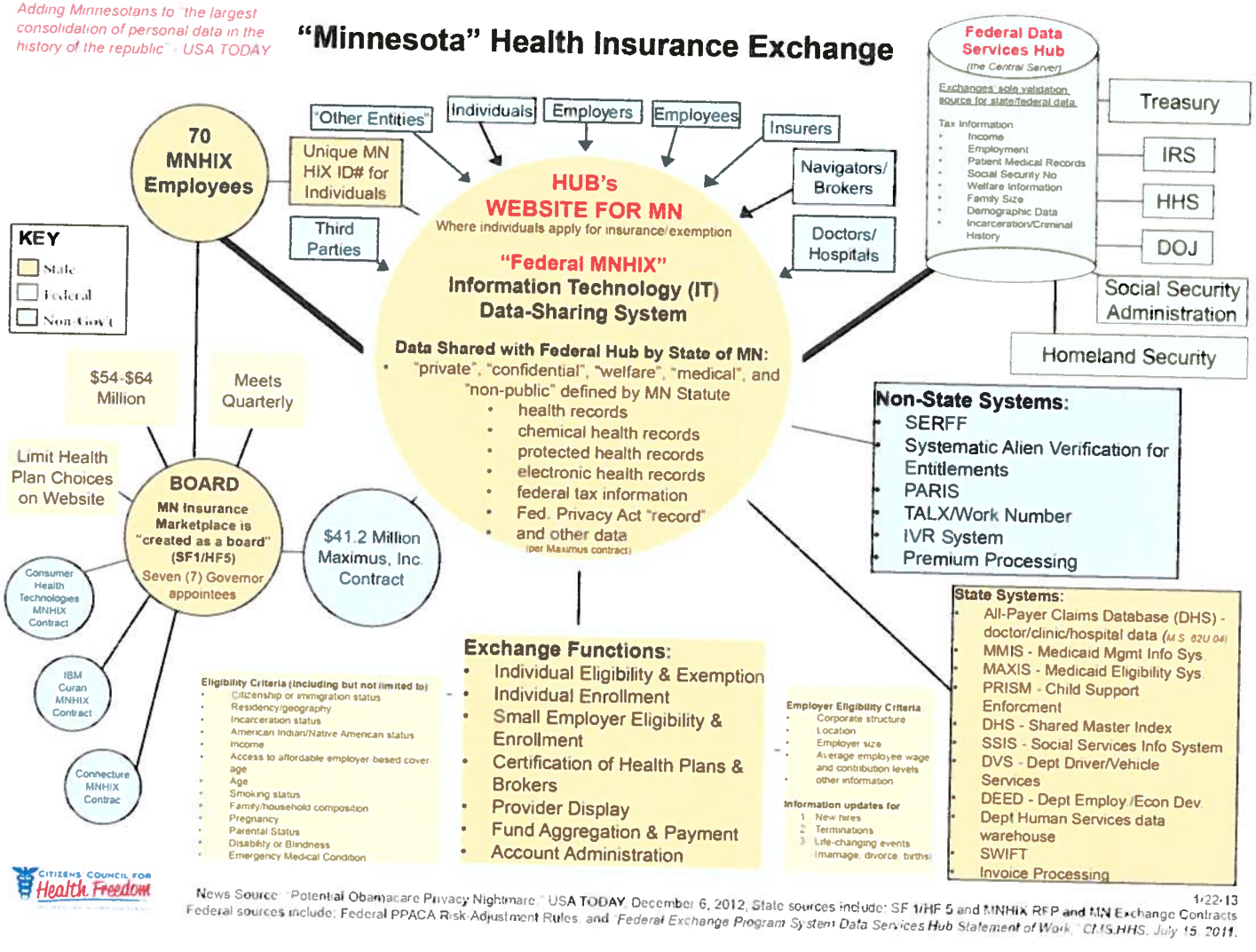
- verify your identity
- certify your citizenship
- check if you have a criminal history
- see if you qualify for Medicaid or Medicare
- verify that you have no access to employer-sponsored coverage
- check your income, family status and tax status.

This is not Travelocity. The Minnesota legislature are debating bills to create and implement the Exchange. Senate File 1, and its companion bill, House File 5, create the Minnesota Insurance Marketplace as a "board" of seven political appointees (SF 1, Sec. 4).

Interestingly, the bills do not mention the extensive IT (info tech) system being created between state agencies and the federal government. The IT system, not the board is the true exchange. The board meets quarterly to make sure the contracts, data flow and payments are made. The largest sections of the diagram below – government sharing of data on individuals -- are not explicitly spelled out in SF1/HF5. In fact, if you read the bills, you will not find the words "Internet," "portal," "website" "online" or the "Federal Data Services Hub." Yet, the heart and soul of the Exchange is the data-sharing system.

The Minnesota Exchange diagram is complex on paper, but the goal of the government exchange is simple: to impose on Minnesota the intrusive controls of

Obamacare.



Coming Tuesday: Reality #3

Back to Realities

Share this Page

Our Petitions

Have your voice heard & make a difference.

VIEW PETITIONS

Help CCHF Grow!

COMMENTARY

Of States and Heath Insurance Exchanges

By Michael F. Cannon (/people/michael-cannon)

This article appeared in Reuters (http://blogs.reuters.com) *on December 18, 2012.*

Reuters reports ["No sign Congress meant to limit health exchange subsidy: CBO (http://www.reuters.com/article/2012/12/07/us-usa-healthcare-exchanges-idUSBRE8B600J20121207)," Dec. 6] that a recent Congressional Budget Office letter "could complicate" efforts to stop the Internal Revenue Service from imposing "Obamacare's" employer mandate in states that refuse to implement a health insurance "exchange."

In fact, the CBO's letter devastates the IRS's already weak case.

The Patient Protection and Affordable Care Act imposes a $2,000-per-worker charge on employers *only if* one of their employees receives a "premium assistance tax credit," and the act authorizes those credits *only if* states create their own exchanges.

If a state opts instead for a federal exchange, as more than 30 states have, the IRS has zero authority to penalize employers there. "As even some health law supporters concede," Kaiser *Health News* reports (http://www.kaiserhealthnews.org/Stories/2012/November/29/health-law--litigation-and-exchanges.aspx?p=1), "the claim that Congress denied to the federal exchanges the power to distribute tax credits and subsidies seems correct as a literal reading of the most relevant provisions."

Yet the IRS is attempting to issue those tax credits — and penalize employ-

ers — where it has no authority to do so. Oklahoma's attorney general has filed suit to protect its employers from this illegal tax.

The IRS says it is carrying out congressional intent — a curious claim from an agency violating the express language of a duly enacted statute. The only piece of legislative history the IRS has offered to support its action is the CBO's cost projections of the bill. The CBO predicted there would be tax credits issued in all states.

That does not, however, establish congressional intent to offer tax credits in federal exchanges, much less statutory authority to do so. The CBO was merely assuming, as most everyone did in 2009, that all states would establish their own exchanges.

To support its argument, the IRS would need the CBO to say it based those projections on assurances it received from the bill's authors, or its own analysis, that tax credits would be available through federal exchanges. Yet the CBO said no such thing.

Instead, its Dec. 6 letter (http://www.cbo.gov/sites/default/files/cbofiles/attachments/43752-letterToChairmanIssa.pdf) acknowledges that CBO analysts "did not perform a separate legislative analysis of that issue." When projecting the cost of the Senate bill that ultimately became Obamacare, the CBO merely "anticipated ... that the tax credits would be available in every state." Just as they did with the bill that came from the House of Representatives, despite the very different language in the two bills.

That is devastating to the IRS case. Before this letter, the CBO's projections offered no support to the IRS, because they merely reflected the assumption that all states would establish exchanges. Now the CBO has admitted that it didn't read the bill closely enough to notice the law doesn't authorize credits through federal exchanges.

Critics of the IRS have produced lots of legislative history (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2106789) indicating the statute's language reflects congressional intent. The IRS never had the law on its side. Now it has nothing to support its theory of congressional intent.

If that "complicates" efforts to stop the IRS from imposing illegal taxes on employers, please let's have more complications.


(/people/michael-cannon)

Michael F. Cannon (http://www.cato.org/people/michael-cannon) is director of health policy studies at the Cato Institute and coauthor of Healthy Competition: What's Holding Back Health Care and How to Free It (http://www.cato.org/store/books/healthy-competition-whats-holding-back-health-care-how-free-it-paperback).